

IN THE SENATE

SENATE BILL NO. 1013

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2701, IDAHO CODE, TO FURTHER DEFINE A TERM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2701, Idaho Code, be, and the same is hereby amended to read as follows:

37-2701. DEFINITIONS. As used in this act:

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy created in chapter 17, title 54, Idaho Code, or its successor agency.

(d) "Bureau" means the Bureau of Narcotic and Dangerous Drugs, United States Department of Justice, or its successor agency.

(e) "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of article II of this act.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Director" means the director of the Idaho state police.

(i) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(j) "Dispenser" means a practitioner who dispenses.

(k) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(l) "Distributor" means a person who distributes.

(m) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(n) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this act. It includes, but is not limited to:

(1) Blunt wraps, including individual tobacco wrappers, also known as wraps or roll your own cigar wraps, that are made wholly or in part from tobacco, including reconstituted tobacco, whether in the form of leaf, sheet or tube, and that are used to hold any burning material or illegal substance;

(2) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(3) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(4) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(5) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(6) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(7) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(8) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(9) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(10) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

1 (101) Containers and other objects used, intended for use, or designed
2 for use in storing or concealing controlled substances;

3 (112) Hypodermic syringes, needles and other objects used, intended
4 for use, or designed for use in parenterally injecting controlled sub-
5 stances into the human body;

6 (123) Objects used, intended for use, or designed for use in ingesting,
7 inhaling, or otherwise introducing marijuana, cocaine, hashish, or
8 hashish oil into the human body, such as:

9 (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
10 pipes with or without screens, permanent screens, hashish heads,
11 or punctured metal bowls;

12 (ii) Water pipes;

13 (iii) Carburetion tubes and devices;

14 (iv) Smoking and carburetion masks;

15 (v) Roach clips: meaning objects used to hold burning material,
16 such as a marijuana cigarette, that has become too small or too
17 short to be held in the hand;

18 (vi) Miniature cocaine spoons, and cocaine vials;

19 (vii) Chamber pipes;

20 (viii) Carburetor pipes;

21 (ix) Electric pipes;

22 (x) Air-driven pipes;

23 (xi) Chillums;

24 (xii) Bongs;

25 (xiii) Ice pipes or chillers;

26 In determining whether an object is drug paraphernalia, a court or other
27 authority should consider, in addition to all other logically relevant fac-
28 tors, the following:

29 1. Statements by an owner or by anyone in control of the object concern-
30 ing its use;

31 2. Prior convictions, if any, of an owner, or of anyone in control of the
32 object, under any state or federal law relating to any controlled sub-
33 stance;

34 3. The proximity of the object, in time and space, to a direct violation
35 of this act;

36 4. The proximity of the object to controlled substances;

37 5. The existence of any residue of controlled substances on the object;

38 6. Direct or circumstantial evidence of the intent of an owner, or of
39 anyone in control of the object, to deliver it to persons whom he knows,
40 or should reasonably know, intend to use the object to facilitate a vi-
41 olation of this act; the innocence of an owner, or of anyone in control
42 of the object, as to a direct violation of this act shall not prevent a
43 finding that the object is intended for use, or designed for use as drug
44 paraphernalia;

45 7. Instructions, oral or written, provided with the object concerning
46 its use;

47 8. Descriptive materials accompanying the object which explain or de-
48 pict its use;

49 9. National and local advertising concerning its use;

50 10. The manner in which the object is displayed for sale;

1 11. Whether the owner, or anyone in control of the object, is a legit-
2 imate supplier of like or related items to the community, such as a li-
3 censed distributor or dealer of tobacco products;

4 12. Direct or circumstantial evidence of the ratio of sales of the ob-
5 ject(s) to the total sales of the business enterprise;

6 13. The existence and scope of legitimate uses for the object in the com-
7 munity;

8 14. Expert testimony concerning its use.

9 (o) "Financial institution" means any bank, trust company, savings and
10 loan association, savings bank, mutual savings bank, credit union, or loan
11 company under the jurisdiction of the state or under the jurisdiction of an
12 agency of the United States.

13 (p) "Immediate precursor" means a substance which the board has found
14 to be and by rule designates as being the principal compound commonly used or
15 produced primarily for use, and which is an immediate chemical intermediary
16 used or likely to be used in the manufacture of a controlled substance, the
17 control of which is necessary to prevent, curtail, or limit manufacture.

18 (q) "Isomer" means the optical isomer, except as used in section
19 37-2705(d), Idaho Code.

20 (r) "Law enforcement agency" means a governmental unit of one (1) or
21 more persons employed full-time or part-time by the state or a political sub-
22 division of the state for the purpose of preventing and detecting crime and
23 enforcing state laws or local ordinances, employees of which unit are autho-
24 rized to make arrests for crimes while acting within the scope of their au-
25 thority.

26 (s) "Manufacture" means the production, preparation, propagation,
27 compounding, conversion or processing of a controlled substance, and in-
28 cludes extraction, directly or indirectly, from substances of natural
29 origin, or independently by means of chemical synthesis, or by a combina-
30 tion of extraction and chemical synthesis, and includes any packaging or
31 repackaging of the substance or labeling or relabeling of its container,
32 except that this term does not include the preparation or compounding of a
33 controlled substance:

34 (1) By a practitioner as an incident to his administering or dispensing
35 of a controlled substance in the course of his professional practice; or

36 (2) By a practitioner, or by his authorized agent under his supervi-
37 sion, for the purpose of, or as an incident to, research, teaching, or
38 chemical analysis and not for delivery.

39 (t) "Marijuana" means all parts of the plant of the genus Cannabis, re-
40 gardless of species, and whether growing or not; the seeds thereof; the resin
41 extracted from any part of such plant; and every compound, manufacture,
42 salt, derivative, mixture, or preparation of such plant, its seeds or resin.
43 It does not include the mature stalks of the plant unless the same are in-
44 termixed with prohibited parts thereof, fiber produced from the stalks, oil
45 or cake made from the seeds or the achene of such plant, any other compound,
46 manufacture, salt, derivative, mixture, or preparation of the mature stalks
47 (except the resin extracted therefrom or where the same are intermixed with
48 prohibited parts of such plant), fiber, oil, or cake, or the sterilized seed
49 of such plant which is incapable of germination. Evidence that any plant
50 material or the resin or any derivative thereof, regardless of form, con-

1 tains any of the chemical substances classified as tetrahydrocannabinols
2 shall create a presumption that such material is "marijuana" as defined and
3 prohibited herein.

4 (u) "Narcotic drug" means any of the following, whether produced di-
5 rectly or indirectly by extraction from substances of vegetable origin, or
6 independently by means of chemical synthesis, or by a combination of extrac-
7 tion and chemical synthesis:

8 (1) Opium and opiate, and any salt, compound, derivative, or prepara-
9 tion of opium or opiate.

10 (2) Any salt, compound, isomer, derivative, or preparation thereof
11 which is chemically equivalent or identical with any of the substances
12 referred to in clause 1, but not including the isoquinoline alkaloids of
13 opium.

14 (3) Opium poppy and poppy straw.

15 (4) Coca leaves and any salt, compound, derivative, or preparation of
16 coca leaves, and any salt, compound, isomer, derivative, or preparation
17 thereof which is chemically equivalent or identical with any of these
18 substances, but not including decocainized coca leaves or extractions
19 of coca leaves which do not contain cocaine or ecgonine.

20 (v) "Opiate" means any substance having an addiction-forming or ad-
21 diction-sustaining liability similar to morphine or being capable of
22 conversion into a drug having addiction-forming or addiction-sustaining
23 liability. It does not include, unless specifically designated as con-
24 trolled under section 37-2702, Idaho Code, the dextrorotatory isomer of
25 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does in-
26 clude its racemic and levorotatory forms.

27 (w) "Opium poppy" means the plant of the species *Papaver somniferum* L.,
28 except its seeds.

29 (x) "Peace officer" means any duly appointed officer or agent of a law
30 enforcement agency, as defined herein, including, but not limited to, a duly
31 appointed investigator or agent of the Idaho state police, an officer or em-
32 ployee of the board of pharmacy, who is authorized by the board to enforce
33 this act, an officer of the Idaho state police, a sheriff or deputy sheriff of
34 a county, or a marshal or policeman of any city.

35 (y) "Person" means individual, corporation, government, or governmen-
36 tal subdivision or agency, business trust, estate, trust, partnership or as-
37 sociation, or any other legal entity.

38 (z) "Poppy straw" means all parts, except the seeds, of the opium poppy,
39 after mowing.

40 (aa) "Practitioner" means:

41 (1) A physician, dentist, veterinarian, scientific investigator, or
42 other person licensed, registered or otherwise permitted to distrib-
43 ute, dispense, conduct research with respect to or to administer a
44 controlled substance in the course of his professional practice or re-
45 search in this state;

46 (2) A pharmacy, hospital, or other institution licensed, registered,
47 or otherwise permitted to distribute, dispense, conduct research with
48 respect to or to administer a controlled substance in the course of
49 their professional practice or research in this state.

1 (bb) "Production" includes the manufacture, planting, cultivation,
2 growing, or harvesting of a controlled substance.

3 (cc) "Simulated controlled substance" means a substance that is not a
4 controlled substance, but which by appearance or representation would lead
5 a reasonable person to believe that the substance is a controlled substance.
6 Appearance includes, but is not limited to, color, shape, size, and markings
7 of the dosage unit. Representation includes, but is not limited to, repre-
8 sentations or factors of the following nature:

9 (1) Statements made by an owner or by anyone else in control of the sub-
10 stance concerning the nature of the substance, or its use or effect;

11 (2) Statements made to the recipient that the substance may be resold
12 for inordinate profit; or

13 (3) Whether the substance is packaged in a manner normally used for il-
14 licit controlled substances.

15 (dd) "State," when applied to a part of the United States, includes any
16 state, district, commonwealth, territory, insular possession thereof, and
17 any area subject to the legal authority of the United States of America.

18 (ee) "Ultimate user" means a person who lawfully possesses a controlled
19 substance for his own use or for the use of a member of his household or for
20 administering to an animal owned by him or by a member of his household.

21 (ff) "Utility" means any person, association, partnership or corpora-
22 tion providing telephone and/or communication services, electricity, natu-
23 ral gas or water to the public.